Supreme Court, U.S.
FILED
00 188 MAY 30 2000
OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

FRANK T. BRZOZOWSKI,
Petitioner

v.

STATE OF DELAWARE,
Respondent

On Petition For Writ Of Certiorari
To The United States Court
Of Appeals For The 3rd Circuit

PETITION FOR WRIT OF CERTIORARI

+++

Frank T. Brzozowski, Pro-se
2357 E. Dauphin Street
Philadelphia, PA 19125
215-425-7672

40PP

QUESTIONS PRESENTED FOR REVIEW

1. Whether the civil rights of Petitioner Frank Brzozowski, a Pennsylvania resident, were violated by employees of the State of Delaware and whether the petitioner's civil rights should be addressed in federal court since the state court refused to address them?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

Frank Brzozowski, petitioner

State of Delaware

Delaware State Police Sgt. Ralph M.Engler

Delaware Attorney General's Office with various deputies at different stages of proceedings

Commissioner A. Coppadge

M.C. Judge Alex Smalls

Bailiff L. Davis

United States District Court Judge Roderick McKelvie

3rd Circuit Court of Appeals panels

Circuit Justices Becker, McKee and Aldisert

TABLE OF CONTENTS Page

Questions Presented for Review i
List of Parties to the Proceedings in the Court Below ii
Table of Contents iii
Table of Authorities v
Petition for Writ of Certiorari 1
Opinions Below 1
Jurisdiction 2
Constitutional Provisions, Treaties, Statutes, Rules and Regulations 2
Statement of Case 3
Reasons for Granting the Writ 11
Conclusion 12
Appendix:

Opinion by Chief Judge Becker, Circuit Judges McKee and Aldisert and Judgment dated November 30, 1999 in U.S. Court of Appeals, 3rd Circuit, No. 99-5529. App. 1-6

Opinion in the nature of ORDER DISMISSING DEFENDANT'S PETITION FOR REMOVAL AND REMANDING TO STATE JURISDICTION by U.S.D.C. Judge Roderick McKelvie in Civil Action No. 99-109-RRM, on June 10, 1999. App. 7-9

ORDER DENYING DEFENDANT'S MOTION FOR REARGUMENT by United States District Judge Roderick R. McKelvie in Civil Action

No. 99-109-RRM, on March 28, 2000, and entered on March 29, 2000. App. 10-11

SUR PETITION FOR PANEL REHEARING WITH SUGGESTION FOR REHEARING EN BANC by United States Court of Appeals, 3rd Circuit, dated April 17, 2000, attached to the JUDGMENT certified as a true copy and issued in lieu of formal mandate on April 25, 2000, by Marcia M. Waldron, Acting Clerk. App. 12-14

Exhibit "B" of Appellant's Rebuttal and Motion to Deny Appellee's Motion for Summary Affirmance in United States Court of Appeals, 3rd Circuit, No. 99-5529, consisting of trial transcripts in lower court, indicated that Sgt. Engler was assigned to A.T.F. Gun Trafficking Task Force and that he drove his unmarked police car about 70 m.p.h before arresting petitioner. App. 15-21

——— +++ ———

TABLE OF AUTHORITIES

Cases	Page
Berkemer v. McCarty, 104 S.Ct., 2626 (1984)	5
City of Greenwood v. Peacock, 384 U.S. 808 (1965)	3, 11
Dunn v. Blumstein, 405 U.S. 330 (1972)	4
Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed. 2d 652 (1972)	4
Georgia v. Rachel, 384 U.S. 780 (1965)	3, 11
McDonald v Santa Fe Trial Transp. Co, 427 U.S. 273, 49 L.Ed. 2d 493, 96 S.Ct. 2547	11
Oregon v. Mitchell, 400 U.S. 112 292 (1970)	4
Pollard v. U.S., 352 U.S. 354, 1 L.Ed 2d 393, 77 S.Ct. 481 (1957)	4
Shapiro v. Thompson, 394 U.S. 618 (1969)	4
U.S. v. Gerber, 994 F2d 1556, (1993)	8
Wong Son v. U.S. 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed 2d 441 (1963)	8

Statutes	Page
4th, 5th, 6th and 14th Amendments of the U.S. Constitution	7
6th Amendment rights	10
28 USCS § 1254(1)	2
28 USCA § 1443.	2
Del. R.Crim.P. Rule 16(d)(2)	6
Supreme Court Rule 45	1

PETITION FOR WRIT OF CERTIORARI

Frank Brzozowski, petitioner herein, respectfully prays that a writ of certiorari issue to the judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled case on November 30, 1999. Pursuant to a timely petition for rehearing, Marcia M. Waldron, Acting Clerk, U.S. Court of Appeals For the Third Circuit, certified as a true copy and issued it in lieu of a formal mandate on April 25, 2000. Supreme Court Rule 45 Process; Mandate is invoked.

——— +++ ———

OPINIONS BELOW

The November 30, 1999, opinion of the Court of Appeals, Case No. 99-5529, whose judgment is herein sought to be reviewed, is not published; and is reprinted in the separate Appendix to this Petition at App. 1-6. The judgment for the United States District Court for the District of Delaware, No. 99-109-RRM, entered on November 30, 1999, App. 5-6, and in lieu of a formal mandate on April 25, 2000, App. 12-13, after rehearing App. 14, is unreported and not precedential. The Order Denying Defendant's Motion for Reargument of the judgment and opinion was denied on March 28, 2000, by U.S.D.C. Judge Roderick R. McKelvie for the United States District Court for the District of Delaware, D.C. Civ. No. 99-109-RRM, App.10-11, in regards to the Order of June

10, 1999, App.7-9. These are reprinted in separate Appendix to this Petition, App. 1-14.

——— +++ ———

JURISDICTION

A judgment of the Court of Appeals was entered on November 30, 1999, and the mandate on April 25, 2000. The jurisdiction of the Court is invoked pursuant to 28 USCS § 1254(1).

——— +++ ———

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

28 USCA § 1443. Civil right cases.

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

——— +++ ———

——— +++ ———

STATEMENT OF THE CASE

The judgment of the United States Court of Appeals for the Third Circuit should be reviewed by this court because petitioner's civil rights action met the criteria in Georgia v. Rachel, 384 U.S. 780 (1965) and City of Greenwood v. Peacock, 384 U.S. 808 (1965) in having a racial prejudice impede him and that the police has the ATP federal color. Many other out of state motorists are unconstitutionally and illegally entrapped and arrested by Delaware state police officers who are members of a federal ATF task force team, who failed to find contraband, and justify their illegal actions by issuing speeding violations. The state police and the state attorney general also refused defendants of traffic arrests to allow inspection of the police cars, and to release pertinent discovery that would prove illegal activity in the arrests.

Moreover, Petitioner did not receive a fair trial due to prejudice and racial inequality by the court, which deprived him of civil rights and the freedom to exercise and enjoy fundamental due process rights. Petitioner contends that the judgment in his case was in conflict with the protections of other decisions of the U.S. Circuit Court and Supreme Court.

Petitioner, Frank Brzozowski, an Appellant in the previous action, is not an attorney, nor an employee of a law firm, nor a student matriculated in a law school, invokes a less stringent pro-se standard,

Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed. 2d 652 (1972) and Pollard v. U.S. 352 U.S. 354, 1 L.Ed.2d 393, 77 S.Ct. 481 (1957) with this Petition for Writ of Certiorari and he seeks to reverse the Judgment of November 30, 1999, in the 3rd Circuit Court of Appeals, Appendix App. 1-6.

Petitioner is a resident of Pennsylvania who while going to work has been oppressed by employees representing the State of Delaware. Petitioner contends that the right to travel interstate without fear of tricks and illegal traps is a civil right. "The right to travel interstate is an unconditional personal right, whose exercise cannot be conditioned." Dunn v. Blumstein, 405 U.S. 330 (1972); Oregon v. Mitchell, 400 U.S. 112 (1970); Shapiro v. Thompson, 394 U.S. 618 (1969). Petitioner is alleged to have passed an unmarked silver Ford Crown Victoria that was illegally doing 70 m.p.h. in a 65 m.p.h. zone on federal interstate I-495 at Wilmington, Delaware, App. 16-18, and he was arrested for speeding by the driver Sgt. Ralph Engler, who is a member of the ATF task force on gun running, Appendix App. 15. Petitioner contends that the arrest violated his civil rights since the police officer was illegally breaking the law prior to the arrival of the petitioner. Petitioner was found guilty at a trial presided by Judge Alex Smalls of the Municipal Court of Delaware, but Sgt. Engler was not arrested or convicted for his offense.

Petitioner believes the court has overlooked or misapprehended civil rights of a white person who was oppressed by black court officials, including Commissioner Coppadge and Judge Smalls, as well as

prejudice in favor of a law enforcement officer, who was not in hot pursuit, and who was intentionally and knowingly violating the law to entrap unsuspecting out-of-state persons. Petitioner believes that if he was a black man who was oppressed by white court officials in the same matter, that his civil rights case would be heard.

Appellant petitions this court since he was unable to exercise and enjoy civil and constitutional rights before the state court of Delaware, who avoid and disregard U.S. constitutional issues in behalf of the accused. Petitioner contends that he was the victim of an illegal arrest and that the case was tainted from the start. This was not a matter of hot pursuit; Sgt. Engler testified that he rides his unmarked police car at 70 m.p.h., Appendix App. 17, which is a violation of the same statute that he arrested the petitioner, and it is illegal, and that he arrested the petitioner who drove beside him in an adjacent lane. Sgt. Engler also testified that he does not arrest all of the people that he stops for speeding above the speed limit. Appendix App. 20. However, since the petitioner is from another state, Sgt. Engler unfairly arrested him and subjected him to unequal treatment like he treats other motorists. Sgt. Engler lied about the speed at the time of the arrest, which he did not substantiate, with a printout from the radar device. Although Sgt. Engler's style is entrapment and petitioner raised the matter before Judge Smalls at the trial, it was downplayed and not considered as a type of defense at the trial. Petitioner did not receive equal protection under the laws when he was stopped. It is contended that these illegal acts are unconstitutional by Berkemer v. McCarty, 104 S.Ct.,

2626 (1984), as well as not having the Miranda rights read before Mr. Brzozowski was forced into revealing personal information that was used against him at trial to obtain the conviction, that was illegally lodged while this federal matter was ongoing.

The reason that this and other matters in the case were not clearly construed in the petition for removal is that petitioner was not able to enjoy a civil right of obtaining discovery and being able to inspect the police vehicle that is permitted by Delaware C.C.P. Criminal Rule 16. In a letter dated January 3, 1999, and delivered by certified mail on January 6, 1999, to the prosecutor's office Petitioner made a "request for all evidence and information to be used as evidence at the trial", including radar documents. The Attorney General and the police refused to comply with the discovery request prior to April 20, 1999. When the petition for removal was filed, Rule 16(d)(2) was not enforced by Commissioner Coppadge, who is black and who displayed prejudice against the petitioner, and this prevented Petitioner from having certain facts establishing the violation of his civil rights. This lack of enforcement hurt petitioner in the preparation of this case and it adversely affected the immediate federal filings.

The petitioner also believed that since Sgt. Engler was too busy looking around in the petitioner's car, that he would not be able to pick him out of a line-up; the court refused to permit petitioner to enjoy this constitutional right of the accused, to find out if he could be identified by the accuser. Commissioner Coppadge also was prejudiced against the Petitioner again and it is truly believed that Sgt.

Engler would not have been able to identify the petitioner before they met before the court.

This court is implored to reconsider this appeal for the following facts and occurrences that occurred to the petitioner, and to consider what they would have done if they were subjected to the same events as an out-of-state motorist in Delaware that was profiled to go before their court.

The C.C.P. case violated Appellant's civil rights and constitutional rights of the 4th, 5th, 6th and 14th Amendments of the U.S. Constitution which includes, fairness, due process and the enjoyment of all rights of the accused that are applicable and should be protected by the U.S. and Delaware Constitutions. This case violated Appellant's rights of due process and fairness concerning issues: Judge Smalls precluded Appellant from raising matters that were presented in motions court under Commissioner Coppadge. On the contrary, Commissioner Coppadge refused to give Appellant written orders denying most of his motions; thus they could not be used as attachments and be challenged. She also indicated that some matters in the motions in which relief was sought were beyond her and they had to be presented at trial. This was unfair since Judge Small prevented the challenge of Commissioner's decisions and the jury was not presented with essential matters that should have won an acquittal. Commissioner Coppadge denied motions to compel discovery addressed to the prosecutor; she unfairly enforced a motion to quash that was not served upon Appellant until after the hearing was started. She denied Appellant's motion for a lineup; she denied

Appellant's subpoenas; she denied Appellant's motion for written depositions and any subsequent oral depositions prior to trial. Petitioner was unable to enter a First Offender's program as some people who were convicted of crimes in Delaware and has their records expunged.

At the trial Appellant, who is white, was oppressed by Judge Smalls, an another African American court official. Appellant was unable to exercise and enjoy crucial rights such as stating to the jury the constitutional amendments and relevant statutes detailing how petitioner's rights were violated in the case! Petitioner was prevented from addressing the jury issues that could raise doubt and lack of fairness: that in Pennsylvania the record would be expunged after 6 months since this was a first arrest, that the information obtained were "fruits of the poison tree" and should not be allowed, U.S. v. Gerber, 994 F2d 1556, (1963); Wong Son v. U.S. 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed 2d 441 (1963), and that the document with Sgt. Engler's handwriting stating the alleged speed did not conform to the "best evidence rule" since it was made a period of time after the arrest. The date on that document was 12/8/99 overwritten by "98;" Sgt. Engler is accused of writing this document in 1999 and it is not an original of the log of the day of the arrest. Petitioner questions why he was the only person on the 15-entry log between 9:15 a.m. and when the shift was over at 1615 or at 4:15 p.m. It seems incredible that this was the only arrest from Sgt. Engler on a day that the police were in a crackdown for the holidays.

Judge Smalls unfairly pressured Appellant to a limit of 5 minutes to finish his examination of Sgt. Engler, which should have been conducted at a pre-trial deposition. During this pressure petitioner could not produce a document in his papers that in Pennsylvania "all speed detection devices must be tested for accuracy within a period of 60 days prior to the alleged violation, the record must indicate that the device employed has been found accurate within the prescribed period of time." Due to the pressure exerted by judge Smalls the jury could not be informed that all of the trial exhibits for accuracy were beyond the 60 day period, Exhibit "B" over 4 months, Exhibit "C" over 3 months, Exhibit "D" over 4 years for one and 2 years, 8 months for the other, Exhibit "H" over 3 months, Exhibit "F" over 2 months and Exhibit "G" over 2 years before petitioner's arrest. The only document directly relating to the petitioner was Exhibit "I" and none of the other exhibits could be documented as being used to record the information on Exhibit "I" to substantiate a guilty verdict.

At the trial Appellant wanted to inform the jury how his case was tainted with misconduct by the prosecution during the case. Judge Smalls allowed the prosecution to admit information to the jury but he hampered the petitioner from raising several issues and unfairly and unconstitutionally subjected him to strict discipline at the trial. The jury was prevented from hearing that they were misled when several cars were behind Sgt. Engler, in which he could see on the radar, but his radar can not tract more than a car at a time and the other cars are ignored. Sgt. Engler failed to obey 2 subpoenas and

should have been in contempt of court for refusing to participate in a deposition. Sgt. Engler violated petitioner's 6th Amendment rights by not informing him that when he signed the violation that he was pleading guilty to the offense; no Miranda rights were read but Sgt. Engler was able to used petitioner's documents against him. Sgt. Engler wrote 74 m.p.h. on the violation but he trumped it up to 82 m.p.h. for the trial, this was illegal since petitioner was not going as fast as 82 m.p.h. at the time of the arrest in the "1/10 mile" ordeal.

The prosecutors also lied to the court. Deputy Attorney General Babowal deliberately misled Commissioner Coppadge on 5/13/99 by claiming that Appellant had withdrew the 2 subpoenas against Sgt. Engler; this is perjury. In order to win the motion to quash Deputy Attorney Generals Babowal and Phillips misrepresented to the court that the motion had been served by mail; to this date it had never arrived in the mail.

Appellant also experienced other racial inequality, prejudice and harassment by an African American bailiff, L. Davis, for Commissioner Coppadge and Judge Smalls. On 2/23/99 Mr. Davis threatened petitioner not to get his papers ready while at the hearing before Commissioner Coppadge. On 5/20/99 after the trial Mr. Davis made hostile and threatening remarks to the petitioner as he paid his $140.75 in regards to the law stating that the judgment should not be entered until after the federal case is deposed. After a hearing before Judge Smalls who stated that he did not have jurisdiction on 7/1/99, Mr. Davis made a threatening remark toward

petitioner at the Clerk of Court's Office when petitioner requested a printout of the docket of the case.

Judge Small refused to entertain Appellant's Motion for Acquittal on 7/1/99 indicating that he did not have jurisdiction, however, when he was informed that the federal statute prohibited the entry of the judgement until after the federal case was deposed, he ILLEGALLY disregarded the federal statute.

When a black man is deprived of rights by white people it is grounds for a federal civil rights action, however, it is unconstitutional and illegal to also deprive white people of civil rights when other races violate their rights. See McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 49 L.Ed.2d 493, 96 S.Ct. 2547.

——— +++ ———

REASONS FOR GRANTING THE WRIT

The judgment of the United States Court of Appeals for the Third Circuit should be reviewed by this court because petitioner's civil rights action met the criteria in Georgia v. Rachel, 384 U.S. 780 (1965) and City of Greenwood v. Peacock, 384 U.S. 808 (1965) in having a racial prejudice impede him and that the police has the ATP federal color. Many other out of state motorists are unconstitutionally and illegally entrapped and arrested by Delaware state police officers who are members of a federal ATF task force team, who failed to find contraband, and justify

their illegal actions by issuing speeding violations. The state police and the state attorney general also refused defendants of traffic arrests to allow inspection of the police cars, and to release pertinent discovery that would prove illegal activity in the arrests.

Moreover, Petitioner did not receive a fair trial due to prejudice and racial inequality by the court, which deprived him of civil rights and the freedom to exercise and enjoy fundamental due process rights. Petitioner contends that the judgment in his case was in conflict with the protections of other decisions of the U.S. Circuit Court and Supreme Court.

——— +++ ———

CONCLUSION

Wherefore, Petitioner prays that a Writ of Certiorari issue from this Honorable Court to review the judgment of November 30, 1999, in the Third Circuit Court of Appeals and the United States District Court. For the foregoing reasons, Petitioner respectfully prays that its petition for a Writ of Certiorari be granted and that the judgment of the Court below be reversed and directed to allow the appeal of this civil rights case.

/s/ Frank T. Brzozowski
FRANK T. BRZOZOWSKI,
Petitioner, pro-se
2357 E. Dauphin Street
Philadelphia, PA 19125
(215) 425-7672

UNREPORTED-NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 99-5529

STATE OF DELAWARE, Appellee

v.

FRANK T. BRZOZOWSKI, Appellant

On Appeal From the United States District Court
For the District of Delaware
(D.C. Civ. No. 99-cv-00109)
District Judge Honorable Roderick R. McKelvie

Submitted For Possible Summary Action Under
Third Circuit L.A.R. 27.4 and I.O.P. 10.6
October 14, 1999

Before: BECKER (Chief Judge), MCKEE, AND
ALDISERT, Circuit Judges

Filed November 30, 1999

OPINION

PER CURIAM

Appellant Frank Brzozowski appeals the district court's remanding his case to the state court. The underlying action concerns a criminal prosecution of appellant for a speeding violation by the State of Delaware. Appellant petitioned for removal to federal court pursuant to 28 U.S.C. § 1443. Appellant claimed as a basis for removal that he was denied equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution when the State of Delaware did not allow him to participate in a first offender's program for his speeding offense, when others standing accused of more serious crimes were allowed to do so and avoid conviction. Apparently, Delaware offers no such program for traffic offenders. After he had filed a petition for removal in federal district court, a state court jury found appellant guilty of speeding on May 20, 1999.[1] The district court entered an order dismissing appellant's petition for removal and remanding the case to the state court on June 11, 1999. Appellant filed an untimely motion for reconsideration on July 7, 1999. His notice of appeal of the June 11, 1999 remand order was filed on July 12, 1999.[2]

---

[1] It appears that the state court failed to observe the federal procedure for removal pursuant to 28 U.S.C. § 1446(c)(3), requiring that "[t]he filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded." Id. (emphasis added).

[2] The 10-day deadline does not apply in this case. See Georgia v. Rachel, 384 U.S. 780, 784 n. 2 (1966).

An order remanding a case to the state court for which it was removed is generally is not reviewable. See 28 U.S.C. § 1447(d). However, we may review a remand order in a case which was removed pursuant to 28 U.S.C. § 1443, the civil rights removal statute. The probative issue with regard to our jurisdiction is whether removal is sought under § 1443. See, e.g., Davis v. Glanton, 107 F.3d 1044 (3d Cir. 1997). Since appellant sought removal under § 1443, this Court does have jurisdiction to review the removal order.

Although appellant cited § 1443 in his removal petition, we conclude that he was not entitled to removal of his criminal case from state court. In Georgia v Rachel, 384 U.S. 780(1966), the Supreme Court articulated the precise circumstances required to sustain removal under § 1443(1), clarifying that removal requires satisfaction of a two-pronged test: a state court defendant must demonstrate both (1) that he is being deprived of rights guaranteed by a federal law "providing for . . . equal civil rights"; and (2) that he is "denied or cannot enforce that right in the courts" of the state. Id. at 788. "Removal is warranted only if it can be predicted by reference to a law of general application that the defendant will be denied or cannot enforce the specified federal rights in the state courts." Id. at 800. Although appellant argued that he was denied equal protection of the law, thus invoking the Fourteenth Amendment, he did not meet the specific criterion of invoking "a statute that expressly provides for equal rights stated specifically in terms of racial equality." Davis, 107 F.3d at 1049. Therefore, we will

affirm the district court's order remanding appellant's action to state court.

TO THE CLERK

Please file the foregoing opinion.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 99-5529

STATE OF DELAWARE, Appellee

v.

FRANK T. BRZOZOWSKI, Appellant

On Appeal From the United States District Court
For the District of Delaware
(D.C. Civ. No. 99-cv-00109)
District Judge Honorable Roderick R. McKelvie

Submitted For Possible Summary Action Under
Third Circuit L.A.R. 27.4 and I.O.P. 10.6
October 14, 1999

Before: BECKER (Chief Judge), MCKEE, AND
ALDISERT, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of Delaware. On consideration whereof, it is now here ORDERED AND ADJUDGED by this court that the District Court's Order entered June 11, 1999, is hereby affirmed. All of the above in accordance with the Opinion of the Court.

ATTEST:

/s/ P. Douglas Sisk
Clerk

DATED: November 30, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STATE OF DELAWARE,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil Action No.
	)	99-109-RRM
FRANK T. BRZOZOWSKI	)	
	)	
Defendant	)	

ORDER DISMISSING DEFENDANT'S PETITION FOR REMOVAL AND REMANDING TO STATE JURISDICTION

Defendant Frank T. Brzozowski is a resident of Pennsylvania who is charged with speeding in Delaware. Brzozowski seeks the removal of a criminal proceeding in the Criminal Division of the court of Common Pleas of New Castle County, Delaware.

On December 8, 1998, Brzozowski was stopped driving in Delaware by a Delaware State police officer who issued Brzozowski a traffic complaint and summons charging him with speeding. It appears that Brzozowski pled not guilty to the charge of speeding and that the case proceeded for trial in the Court of

Common pleas for New Castle county. It appears that on December 30, 1998, Brzozowski asked the Delaware Attorney General to be placed in a first offenders program, and that his request was denied.

On March 1, 1999, Brzozowski filed a petition to remove his case to the Federal District Court for the District of Delaware pursuant to 28 U.S.C. § 1443 (D.1.1). Brzozowski alleges his Fourteenth Amendment rights to equal protection were violated when he was not placed in a first offenders program. On May 20, 1999, a jury in the Court of Common Pleas found Brzozowski guilty of speeding.

28 U.S.C. § 1446(c)(2) requires "a notice of a criminal prosecution . . . include all grounds for such removal." A failure to state grounds which exist at the time of filing of the notice constitutes a waiver of such grounds. The only grounds for removal Brzozowski states in his petition are that his fourteenth amendment rights were violated because he was not assigned to a first offenders program while others who have committed more serious crimes or traffic offenses have been so assigned.

The scope of removal under 28 U.S.C. § 1443 is highly circumscribed and permits removal only in specific and well-defined circumstances set out in subsections (1) and (2). See Georgia v. Rachel, 384 U.S. 780 (1965); City of Greenwood v. Peacock, 384 U.S. 808 (1965).

As construed by the Supreme Court, § 1443(2) permits removal only by federal officers and those

acting under them. Greenwood v. Peacock, 384 U.S. 821. In his petition, Brzozowski does not allege he is a federal officer or acting under one.

Section 1443(1) affords a right of removal to any person who is denied or cannot enforce in state courts "a right under any law providing for equal civil rights . . . ." In Georgia v. Rachel, the Supreme Court found that for the purposes of § 1443(1), "'equal civil rights' must be construed to mean any law providing for specific civil rights stated in terms of racial equality." Georgia v. Rachel, 384 U.S. at 792.

Brzozowski has not alleged the violation of "any law providing for specific civil rights stated in terms of racial equality." Accordingly, the court finds that Brzozowski has not stated grounds for removal of his criminal prosecution to this court.

For the above reasons, IT IS HEREBY ORDERED as follows:

1) Defendant FRANK T. BRZOZOWSKI's Petition for Removal is dismissed.
2) The case is remanded to state jurisdiction.

/s/Roderick McKelvie
UNITED STATES DISTRICT JUDGE

June 10, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STATE OF DELAWARE,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil Action
	)	No.
	)	99-109-RRM
	)	
FRANK T. BRZOZOWSKI,	)	
	)	
Defendant	)	

ORDER DENYING DEFENDANT'S MOTION FOR REARGUMENT

Defendant Frank T. Brzozowski is a resident of Pennsylvania who is charged with speeding in Delaware. On March 1, 1999, Brzozowski removed a criminal proceeding pending in the Criminal Division of the Court of Common Pleas of New Castle County, Delaware to federal district court on the basis that the complaint was removable under 28 U.S.C. § 1443. On June 6, 1999, the court entered an order dismissing Brzozowski's petition for removal and remanding the case to state court.

On July 7, 1999, Brzozowski filed a motion for reconsideration. Brzozowski also appealed the court's order remanding the case to state court. On November 30, 1999, before this court ruled on Brzozowski's motion for reconsideration, the U.S. Court of Appeals for the Third Circuit affirmed the order remanding the case to state court. Therefore,

IT IS HEREBY ORDERED as follows:

1) Defendant Motion for Reconsideration is denied.

/s/Roderick McKelvie
UNITED STATES DISTRICT JUDGE

March 28, 2000

[filed March 29, 2000 Clerk of the District Court, District of Delaware]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 99-5529

STATE OF DELAWARE, Appellee

v.

FRANK T. BRZOZOWSKI, Appellant

On Appeal From the United States District Court
For the District of Delaware
(D.C. Civ. No. 99-cv-00109)
District Judge Honorable Roderick R. McKelvie

Submitted For Possible Summary Action Under
Third Circuit L.A.R. 27.4 and I.O.P. 10.6
October 14, 1999

Before: BECKER (Chief Judge), MCKEE, AND
ALDISERT, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of Delaware. On consideration whereof, it is now here ORDERED AND ADJUDGED by this court that the District Court's Order entered June 11, 1999, is hereby affirmed. All of the above in accordance with the Opinion of the Court.

ATTEST:

/s/P. Douglas Sisk
Clerk

DATED: November 30, 1999

Certified as a true copy and issued in lieu
of a formal mandate on April 25, 2000
Teste: /s/Marcia M. Waldron
Acting Clerk, U.S. Court of Appeals
For the Third Circuit.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 99-5529
STATE OF DELAWARE
v.
FRANK T. BRZOZOWSKI, Appellant
(D.C. Civ. No. 99-cv-00109)

Present: BECKER Chief Judge, SLOVITER, MANSMANN, GREENBERG, NYGAARD SIRCA, ALITO, ROTH, McKEE, RENDELL, BARRY and ALDISERT, *Circuit Judges

---

SUR PETITION FOR PANEL REHEARING WITH SUGGESTION FOR REHEARING EN BANC

This petition for rehearing filed by Appellant having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc*, the petition for rehearing is DENIED.

BY THE COURT:

/s/ Becker
Chief Judge

DATED: April 17, 2000

*As to panel rehearing only.

DIRECT EXAMINATION

BY MR. BABOWAL:

Q. Good morning, Sergeant Engler.

A.* Good morning.

Q. I'm going to stand down here so I don't block any of the views of the jurors, so they can see you hear you. I ask you to speak up, because some of the jurors are pretty far away from you. I want them to be able to hear everything you have to say.

A. Yes, sir.

Q. Okay.

Sergeant Engler, I see you work for the Delaware State Police. How long have you worked for them?

A. September 2nd of this year, I will complete my nineteenth year.

Q. Okay. And what are you currently doing for them?

A. I'm currently assigned to Special Investigations assigned to A.T.F., Gun Trafficking Task Force at the current time.

Q. Okay. I want to take you back to December 8th of last year. Do you remember that date?

A* By Sergeant Engler

*More specifically, in this case, when I was traveling southbound on I-495 I was in the center lane of the interstate. I observed a light colored vehicle in the left-hand lane, or the passing lane of that vehicle, coming up behind me. It was the only vehicle coming up behind me at that time. And it appeared to be traveling at a high rate of speed. It was obviously traveling faster than my vehicle and my normal rate on the interstate, whether it's the fifty-five or the sixty-five zone, is normally about five miles per hour over the speed limit.

I find if I try to actually do the speed limit, I create a traffic jam. So, I normally travel about five miles over the speed limit. In this case, I could observe this light colored vehicle in the passing lane approaching at a high rate of speed and it eventually overtook my vehicle.

Q. So, you specifically said you knew about, but you don't exactly know how fast you were going, do you?

A.* Again, my standard patrol speed on the interstate is about five to six miles per hour over the speed limit. I make it a habit to do that.

To answer, specifically, what I was doing, no, I can't do that. Again, I can tell you that when I observed the defendant's vehicle coming into

---

A* By Sergeant Engler

*my radar screen, I heard the audible change, I observed it approaching and coming into the radar beam.

I did look down at my speedometer and I did look at the patrol speed on my radar set to make sure that they correspond, to make sure I was not receiving a bad reading.

But to give you an exact speed, no, but I can assure you it was within one or two miles per hour, about seventy miles and hour with one or two, plus one or two miles.

Q. You had stated that you had a unmarked police car that you were driving, it was silver colored?

A.* That's correct.

Q. Does that look like a normal civilian's car?

A. To some.

Q. To some. Yes.

Now, when you cruise at that speed, was that a lawful speed?

A. I'm sorry?

Q. In generally speaking, is that a lawful speed?

A. Is what a lawful speed.

A* By Sergeant Engler

LINDA A. LAVENDER
Official Court Reporter

Q. The speed that you were going with at 9:00, 9:50, whatever, on that date?

A.* No, the speed limit is sixty-five miles per hour.

Q. So, you were going above the speed limit?

A. That's correct.

Q. In a car that looked like a regular civilian's car?

A. That's correct.

Q. Now, you state that you saw the defendant come up beside you, and it was the only car behind you?

A. Could you ask that question again?

Q. How many cars were behind your car at the time of the arrest, or when you made your calibrations, or calculations, or however you do it?

A. At the time I was clocking the defendant's vehicle, it was the only vehicle within my radar field.

Q. How far is your radar field?

A. We can adjust it anywhere from a quarter mile to a mile, and I would say it was probably about a quarter to a half mile at the time.

A* By Sergeant Engler

LINDA A. LAVENDER
Official Court Reporter

A.* Let me answer that for you. There's different settings on the radar, the Stalker radar. In this case it was set on same lane, rear faster. What that does and that 's simply a setting. It's pushing buttons on a key pad I select that setting, and I cruise down the interstate and I watch periodically into my rearview mirror for cars catching me, going fast.

Q. May I ask, the same lane, is that lane two –

A. May I finish my answer, sir? You keep asking the question. I think I have the answer for you this time.

Do I select which car the radar locks on to? No, the radar does that. As I stated before, it has to be the closest, up front vehicle or the largest mass, again, looking two-dimensional.

So, what I'm looking for is, I'm simply and observer for the machine and cross checking the machine, not only the machine itself, but with my speedometer of my vehicle. That's why we maintain a speedometer log. Driving down the road in this case, again, maintaining my speed of approximately seventy miles per hour in the center lane, I can cross check the patrol window in my vehicle and they are basically the same.

A* By Sergeant Engler

LINDA A. LAVENDER
Official Court Reporter

*making a traffic arrest, a criminal arrest, why we arrest, why we don't arrest. Every situation dictates.

Q. But there are some people who have been speeding that you issued a warning and did not arrest?

A.* Absolutely.

Q. Okay.

A. And if I may add. There's probably been more verbal and written warnings than actual tickets. At least by myself.

Q. Are the majority of your people that you arrest from Delaware?

A. I couldn't answer that. I don't know.

Q. In the month of December 1998, could you remember?

MR. BABOWAL: Your Honor, objection. What's the relevancy of whether someone's from Delaware, Pennsylvania, or Florida?

THE COURT: The issue is prejudice.

MR. BRZOZOWSKI: May I--

MR. BABOWAL: Could--

A* By Sergeant Engler

THE COURT: He may explore this. He may explore whether the officer only arrest out-of-stators, or in stators. It's a proper question.

THE WITNESS: I 'm sorry. Ask the question again.

BY MR. BRZOZOWSKI:

Q. Okay. There are many people from many states driving the highway. Can you remember if you arrested more people from out of state than from Delaware, or were there more people from Delaware that you arrested for speeding?

A.* I don't know.

Q. You can't remember in December of this year?

A. This year? December of this year hasn't come yet. December of last year?

Q. I meant the December that had passed. Yes.

A. I don't know. I couldn't give you numbers.

Q. How about last month?

A. I'm sorry?

Q. How about last month?

A* By Sergeant Engler

LINDA A. LAVENDER
Official Court Reporter